

REFERENCE TITLE: local development fees; schools; exclusion

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1138

Introduced by
Senator Burns; Representatives Kavanagh, Murphy, Pearce; Senators Gould,
Harper

AN ACT

AMENDING SECTIONS 9-463.05, 9-500.18 AND 11-1102, ARIZONA REVISED STATUTES;
RELATING TO LOCAL DEVELOPMENT FEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-463.05, Arizona Revised Statutes, is amended to
3 read:

4 9-463.05. Development fees; imposition by cities and towns;
5 infrastructure improvements plan; annual report;
6 limitation on actions; definition

7 A. A municipality may assess development fees to offset costs to the
8 municipality associated with providing necessary public services to a
9 development, including the costs of infrastructure, improvements, real
10 property, engineering and architectural services, financing, other capital
11 costs and associated appurtenances, equipment, vehicles, furnishings and
12 other personalty. **DEVELOPMENT FEES SHALL NOT BE ASSESSED FOR ANY COSTS
13 ASSOCIATED WITH SCHOOL DISTRICT OR CHARTER SCHOOL CONSTRUCTION OR
14 APPURTENANCES, INCLUDING STREETS AND WATER AND SEWER UTILITY FUNCTIONS.**

15 B. Development fees assessed by a municipality under this section are
16 subject to the following requirements:

17 1. Development fees shall result in a beneficial use to the
18 development.

19 2. Monies received from development fees assessed pursuant to this
20 section shall be placed in a separate fund and accounted for separately and
21 may only be used for the purposes authorized by this section. Monies
22 received from a development fee identified in an infrastructure improvements
23 plan adopted or amended pursuant to subsection D of this section shall be
24 used to provide the same category of necessary public service for which the
25 development fee was assessed. Interest earned on monies in the separate fund
26 shall be credited to the fund.

27 3. The schedule for payment of fees shall be provided by the
28 municipality. The municipality shall provide a credit toward the payment of
29 a development fee for the required dedication of public sites, improvements
30 and other necessary public services included in the infrastructure
31 improvements plan and for which a development fee is assessed, to the extent
32 the public sites, improvements and necessary public services are provided by
33 the developer. The developer of residential dwelling units shall be required
34 to pay development fees when construction permits for the dwelling units are
35 issued, or at a later time if specified in a development agreement pursuant
36 to section 9-500.05. If a development agreement provides for fees to be paid
37 at a time later than the issuance of construction permits, the deferred fees
38 shall be paid no later than fifteen days after the issuance of a certificate
39 of occupancy. The development agreement shall provide for the value of any
40 deferred fees to be supported by appropriate security, including a surety
41 bond, letter of credit or cash bond.

42 4. The amount of any development fees assessed pursuant to this
43 section must bear a reasonable relationship to the burden imposed upon the
44 municipality to provide additional necessary public services to the
45 development. The municipality, in determining the extent of the burden

1 imposed by the development, shall consider, among other things, the
2 contribution made or to be made in the future in cash or by taxes, fees or
3 assessments by the property owner towards the capital costs of the necessary
4 public service covered by the development fee.

5 5. If development fees are assessed by a municipality, such fees shall
6 be assessed in a nondiscriminatory manner.

7 6. In determining and assessing a development fee applying to land in
8 a community facilities district established under title 48, chapter 4,
9 article 6, the municipality shall take into account all public infrastructure
10 provided by the district and capital costs paid by the district for necessary
11 public services and shall not assess a portion of the development fee based
12 on the infrastructure or costs.

13 C. A municipality shall give at least sixty days' advance notice of
14 intention to assess a new or modified development fee and shall release to
15 the public a written report that identifies the methodology for calculating
16 the amount of the development fee, explains the relationship between the
17 development fee and the infrastructure improvements plan, includes
18 documentation that supports the assessment of a new or modified development
19 fee and identifies any index or indices to be used for automatic adjustment
20 of the development fee pursuant to subsection F of this section and the
21 timing of those adjustments. The municipality shall conduct a public hearing
22 on the proposed new or modified development fee at any time after the
23 expiration of the sixty day notice of intention to assess a new or modified
24 development fee and at least thirty days prior to the scheduled date of
25 adoption of the new or modified fee by the governing body. A development fee
26 assessed pursuant to this section shall not be effective until seventy-five
27 days after its formal adoption by the governing body of the municipality.
28 Nothing in this subsection shall affect any development fee adopted prior to
29 July 24, 1982.

30 D. Before the assessment of a new or modified development fee, the
31 governing body of the municipality shall adopt or amend an infrastructure
32 improvements plan. The municipality shall conduct a public hearing on the
33 infrastructure improvements plan at least thirty days before the adoption or
34 amendment of the plan. The municipality shall release the plan to the
35 public, make available to the public the documents used to prepare the plan
36 and provide public notice at least sixty days before the public hearing,
37 subject to the following:

38 1. An infrastructure improvements plan may be adopted concurrently
39 with the report required by subsection C of this section, and the
40 municipality may provide for and schedule the notices and hearings required
41 by this subsection together with the notices and hearings required by
42 subsection C of this section.

43 2. A municipality may amend an infrastructure improvements plan
44 without a public hearing if the amendment addresses only elements of
45 necessary public services that are included in the existing infrastructure

1 improvements plan. The municipality shall provide public notice of those
2 amendments at least fourteen days in advance of their effective date.

3 E. For each necessary public service that is the subject of a
4 development fee, the infrastructure improvements plan shall:

5 1. Estimate future necessary public services that will be required as
6 a result of new development and the basis for the estimate.

7 2. Forecast the costs of infrastructure, improvements, real property,
8 financing, other capital costs and associated appurtenances, equipment,
9 vehicles, furnishings and other personalty that will be associated with
10 meeting those future needs for necessary public services and estimate the
11 time required to finance and provide the necessary public services.

12 F. A municipality may automatically adjust a development fee on an
13 annual basis without a public hearing if the adjustment is based on a
14 nationally recognized index applicable to the cost of the necessary public
15 service that is the subject of the development fee and the adjustment
16 mechanism is identified in the report required by subsection C of this
17 section. The municipality shall provide public notice of those adjustments
18 at least thirty days in advance of their effective date.

19 G. Each municipality that assesses development fees shall submit an
20 annual report accounting for the collection and use of the fees. The annual
21 report shall include the following:

22 1. The amount assessed by the municipality for each type of
23 development fee.

24 2. The balance of each fund maintained for each type of development
25 fee assessed as of the beginning and end of the fiscal year.

26 3. The amount of interest or other earnings on the monies in each fund
27 as of the end of the fiscal year.

28 4. The amount of development fee monies used to repay:

29 (a) Bonds issued by the municipality to pay the cost of a capital
30 improvement project that is the subject of a development fee assessment.

31 (b) Monies advanced by the municipality from funds other than the
32 funds established for development fees in order to pay the cost of a capital
33 improvement project that is the subject of a development fee assessment.

34 5. The amount of development fee monies spent on each capital
35 improvement project that is the subject of a development fee assessment and
36 the physical location of each capital improvement project.

37 6. The amount of development fee monies spent for each purpose other
38 than a capital improvement project that is the subject of a development fee
39 assessment.

40 H. Within ninety days following the end of each fiscal year, each
41 municipality shall submit a copy of the annual report to the city clerk.
42 Copies shall be made available to the public on request. The annual report
43 may contain financial information that has not been audited.

1 I. A municipality that fails to file the report required by this
2 section shall not collect development fees until the report is filed.

3 J. Any action to collect a development fee shall be commenced within
4 two years after the obligation to pay the fee accrues.

5 K. For the purposes of this section, "infrastructure improvements
6 plan" means one or more written plans that individually or collectively
7 identify each public service that is proposed to be the subject of a
8 development fee and otherwise complies with the requirements of this section,
9 and may be the municipality's capital improvements plan.

10 Sec. 2. Section 9-500.18, Arizona Revised Statutes, is amended to
11 read:

12 9-500.18. School district construction fees; prohibition

13 Notwithstanding any other law, a city or town shall not assess or
14 collect any fees or costs from a school district or charter school for fees
15 pursuant to section 9-463.05, ~~-. This prohibition does not include~~ INCLUDING
16 fees ~~assessed or collected~~ for streets and water and sewer utility functions.

17 Sec. 3. Section 11-1102, Arizona Revised Statutes, is amended to read:

18 11-1102. County development fees; annual report

19 A. If a county has adopted a capital improvements plan, the county may
20 assess development fees within the covered planning area in order to offset
21 the capital costs for water, sewer, streets, parks and public safety
22 facilities determined by the plan to be necessary for public services
23 provided by the county to a development in the planning area. **DEVELOPMENT
24 FEES SHALL NOT BE ASSESSED AGAINST A DEVELOPMENT, SCHOOL DISTRICT OR CHARTER
25 SCHOOL FOR ANY COSTS ASSOCIATED WITH SCHOOL DISTRICT OR CHARTER SCHOOL
26 CONSTRUCTION OR APPURTENANCES, INCLUDING STREETS AND WATER AND SEWER UTILITY
27 FUNCTIONS.**

28 B. Development fees assessed under this section are subject to the
29 following requirements:

30 1. Development fees shall result in a beneficial use to the
31 development.

32 2. Monies received from development fees shall be placed in a separate
33 fund and accounted for separately and may only be used for the purposes
34 authorized by this section. Interest earned on monies in the separate fund
35 shall be credited to the fund.

36 3. The county shall prescribe the schedule for paying the development
37 fees. The county shall provide a credit toward the payment of the fee for
38 the required dedication of public sites and improvements provided by the
39 developer for which that fee is assessed. The developer of residential
40 dwelling units shall be required to pay the fees when construction permits
41 for the dwelling units are issued.

42 4. The amount of any development fees must bear a reasonable
43 relationship to the burden of capital costs imposed on the county to provide
44 additional necessary public services to the development. In determining the
45 extent of the burden imposed by the development, the county shall consider,

1 among other things, the contribution made or to be made in the future in cash
2 by taxes, fees or assessments by the property owner toward the capital costs
3 of the necessary public service covered by the development fee.

4 5. Development fees shall be assessed in a nondiscriminatory manner.

5 6. In determining and assessing a development fee applying to land in
6 a community facilities district established under title 48, chapter 4,
7 article 6, the county shall take into account all public infrastructure
8 provided by the district and capital costs paid by the district for necessary
9 public services and shall not assess a portion of the development fee based
10 on the infrastructure or costs.

11 C. Before assessing or increasing a development fee, the county shall:

12 1. Give at least one hundred twenty days' advance notice of intention
13 to assess a new or increased development fee.

14 2. Release to the public a written report including all documentation
15 that supports the assessment of a new or increased development fee.

16 3. Conduct a public hearing on the proposed new or increased
17 development fee at any time after the expiration of the one hundred twenty
18 day notice of intention to assess a new or increased development fee and at
19 least fourteen days before the scheduled date of adoption of the new or
20 increased fee.

21 D. A development fee assessed pursuant to this section is not
22 effective for at least ninety days after its formal adoption by the board of
23 supervisors.

24 E. Each county that assesses development fees shall submit an annual
25 report accounting for the collection and use of the fees. The annual report
26 shall include the following:

27 1. The amount assessed by the county for each type of development fee.

28 2. The balance of each fund maintained for each type of development
29 fee assessed as of the beginning and end of the fiscal year.

30 3. The amount of interest or other earnings on the monies in each fund
31 as of the end of the fiscal year.

32 4. The amount of development fee monies used to repay:

33 (a) Bonds issued by the county to pay the cost of a capital
34 improvement project that is the subject of a development fee assessment.

35 (b) Monies advanced by the county from funds other than the funds
36 established for development fees in order to pay the cost of a capital
37 improvement project that is the subject of a development fee assessment.

38 5. The amount of development fee monies spent on each capital
39 improvement project that is the subject of a development fee assessment and
40 the physical location of each capital improvement project.

41 6. The amount of development fee monies spent for each purpose other
42 than a capital improvement project that is the subject of a development fee
43 assessment.

1 F. Within ninety days following the end of each fiscal year, each
2 county shall submit a copy of the annual report to the clerk of the board of
3 supervisors. Copies shall be made available to the public on request. The
4 annual report may contain financial information that has not been audited.

5 G. A county that fails to file the report required by this section
6 shall not collect development fees until the report is filed.

7 H. This section does not affect any development fee adopted before May
8 18, 2000.